

## ALEXANDER SCHULTZ

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May 14, 2010

### Freedom of Information Act (FOIA) Request

To Whom It May Concern:

This request relates to the calculation of interest on back pay paid to federal employees under the Back Pay Act. Your human resource office or personnel data center that handles Back Pay Act calculations under §5596 of title 5, United States Code, should be able to respond to this request. Under FOIA, please provide:

1. Copies of all documents in your agency's possession or which you have access to, that support, discuss, explain, analyze, interpret, or directly relate to how and when to offset or deduct Federal Employees Compensation Act (FECA) wage loss payments paid by the Office of Workers Compensation Programs (OWCP) when computing interest under the Back Pay Act, §5596 of title 5, United States Code, and 5 CFR §550.805 and 5 CFR §550.806.
2. Also provide copied of all documents that discuss whether or not FECA/OWCP workers compensation wage loss payments should be deducted because they are not specifically mentioned in the regulations or law.
3. Also provide copies of all documents that discuss whether or not FECA/OWCP workers compensation payments should be treated as "erroneous payments," like federal pension or disability benefits.
4. Also provide copies of all documents that discuss whether or not FECA/OWCP workers compensation payments should be treated as "administrative offsets."

If your agency has no such documents available, it may not be in compliance with the law. The Administrative Procedure Act requires publication in the Federal Register of "substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency." 5 U.S.C.

§552(a)(1)(D). Because the Back Pay Act and its regulations do not specifically address the above issues, the agency must make interpretations that have general and widespread applicability. In *Cheshire Hospital v. New Hampshire-Vermont Hospitalization Service, Inc.*, 689 F.2d 1112 (1<sup>st</sup> Cir. 1982), the agency was not required to publish in the Federal Register its interpretation of offset rule, i.e., that interest expense be reduced by investment income, as requiring of interest earned on bond issue placed in debt service reserve fund against interest payments made by provider on borrowed indebtedness, where interpretation was issued in adjudicatory opinion and such was made available to the public. Other cases have stated that where such information is otherwise made available, publication in the Federal Register was not required. Therefore, if you do not have documents or records available specifically addressing your agency's procedure for calculating back pay under the Back Pay Act that effectively answer the following questions, then please provide this information by actually answering the following questions:

1. Does your agency use the U.S. Office of Personnel Management's (OPM) "Computation of Interest on Back Pay System," described in Exhibit A?
2. If your agency uses the U.S. Office of Personnel Management's "Computation of Interest on Back Pay System," does it deduct FECA/OWCP workers compensation wage loss payments in computing Back Pay Act interest?
3. If your agency deducts or offsets FECA/OWCP workers compensation wage loss payments in computing Back Pay Act interest, how does it deduct or offset such payments:
  - a. Before the calculation of any Back Pay Act interest?
  - b. After the calculation of Back Pay Act interest?
  - c. By inserting the total FECA/OWCP workers compensation paid, into the "Total outside earnings" slot contained in OPM's Computation of Interest on Back Pay System computer program reflected in attached Exhibit B.
4. If your agency deducts or offsets FECA/OWCP workers compensation wage loss payments in computing Back Pay Act interest, does it forward the deduction or offset back to OWCP?

I am voluntarily gathering this information to present to Vice President Biden's White Task Force on Middle Class Working Families and the U.S. Office of Personnel Management so that they may address gaps and unfairness in the Back Pay Act regulations that affect federal employees who are members of working families covered by the task force. Your reply will be included in the presentation that I present to Vice President Biden's White House Task Force and the Office of Personnel Management.

Very truly yours,

/s/ Alexander Schultz

Alexander Schultz

cc:

Vice President Biden's White Task Force on Middle Class Working Families  
U.S. Office of Personnel Management

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

June 9, 2010

Mr. Alexander Schultz  
Attorney at Law  
Post Office Box 868  
Lake Worth, FL 33460

Dear Mr. Schultz:

This letter is USTR's response to your Freedom of Information Act request for **"copies of all documents in your agency's possession or which you have access to, that support, discuss, explain, analyze, interpret, or directly relate to how and when to offset or deduct Federal Employees Compensation Act (FECA) wage loss payments paid by the Office of Workers Compensation Programs (OWCP) when computing interest under the Back Pay Act, 5596 of title 5, United States Code, and 5 CFR 550.805 and CFR 550.806; documents that discuss whether or not FECA/OWCP workers compensation wage loss payments should be deducted because they are not specifically mentioned in the regulations or law; copies of all documents that discuss whether or not FECA/OWCP workers compensation payments should be treated as "erroneous payments," like federal pension or disability benefits; copies of all documents that discuss whether or not FECA/OWCP workers compensation payments should be treated as "administrative offsets".**

Please be advised that we have not located any documents within the scope of your request. The office which can provide the information for any of the Executive Office of the President components is the:

Executive Office of the President  
Office of Administration  
Human Resources Management Division  
1800 G St. N.W.  
Washington, D.C. 20508

Inasmuch as this constitutes a complete response to your request, I am closing your file in this office. In the event that you are dissatisfied with USTR's determination, you may appeal such a denial, within thirty (30) days, in writing to:

Mr. Alexander Schultz

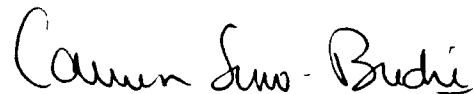
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FOIA Appeals Committee  
Office of the United States Trade Representative  
1724 F Street, N.W.  
Washington, D.C. 20508

Both the letter and the envelope should be clearly marked: "Freedom of Information Act Appeal". In the event you are dissatisfied with the results of any such appeal, judicial review will thereafter be available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, where we searched for the records you seek.

Should you have any questions, please feel free to call the FOIA office at (202) 395-3419.

Sincerely,

A handwritten signature in black ink that reads "Carmen Suro-Bredie". The signature is written in a cursive, flowing style.

Carmen Suro-Bredie  
Chief FOIA Officer

Case File #10052125